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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

314-619

No. 1029 74

MRS. LOUISE HARRIS MOORE,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

J. C. MURPHY,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI.

May it Please the Court:

The petition of Mrs. Louise Harris Moore respectfully shows to this Honorable Court:

A.

Statement of Matters Involved.

Petitioner brought suit in the Court of Claims of the United States for the recovery of individual income taxes assessed against and collected from her for the year 1932. Petitioner had no taxable net income for that year, but on the contrary had a loss (R. 4). Petitioner's husband, H. Clay Moore, had a taxable net income and elected to file what he called a joint income tax return, in which he in-

cluded the items of gross income and the losses sustained by petitioner. The tax return was not signed by petitioner, but was signed only by petitioner's husband (R. 4). The amount of tax shown on the return, together with the subsequently determined deficiency, was first assessed against H. Clay Moore, and upon his failure to pay the assessments, the original tax and the deficiency in the sum of $3,737.52 was thereupon assessed against and collected from petitioner (R. 6).

B.

Questions Presented.

Can the income tax due, under Revenue Act of 1932 by a husband on his income, legally be assessed against and collected from his wife where the husband filed a joint income tax return?

C.

Relevant Parts of Applicable Statutes.

The immediately applicable portion of the Revenue Act of 1932, 47 Stat. 169, 188, is as follows:

> "Sec. 51. Individual Returns.
>
> (a) Requirement.—The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title—
>
> (1) Every individual having a net income for the taxable year of $1,000 or over, if single, or if married and not living with husband or wife;
>
> (2) Every individual having a net income for the taxable year of $2,500.00 or over, if married and living with husband or wife; and,
>
> (3) Every individual having a gross income for the taxable year of $5,000 or over, regardless of the amount of his net income.

(b) Husband and Wife.—If a husband and wife living together have an aggregate net income for the taxable year of $2,500 or over, or an aggregate gross income for such year of $5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income."

The Revenue Act of 1932 did not in terms authorize the assessment of deficiencies or tax against the wife, where the tax is due on the husband's income.

D.

Reasons Relied Upon for Allowance of Writ.

It is believed the petition should be granted for the following reasons:

(a) The decision of the court below in holding that the income tax due on the husband's income was legally assessed against and collected from petitioner is in conflict with the decisions of the Circuit Courts of Appeals for the second, sixth, seventh and ninth circuits.

(b) The Court below has decided an important question of Federal law, which has not been but should be settled by this Court.

(c) The Court below has decided Federal questions probably in conflict with applicable decisions of this Court in the following particulars:

(1) It has resolved the doubt in a taxing statute in favor of the tax, and against the taxpayer.

(2) It has given the applicable provision of the statute a construction which would probably make it unconstitutional, in that it would probably violate the due process

clause of the Fifth Amendment, and would be a direct tax without apportionment.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims of the United States, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 44578, Mrs. Louise Harris Moore (Mrs. H. Clay Moore) *v.* United States, and that the said judgment of the Court of Claims of the United States be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

MRS. LOUISE HARRIS MOORE,
By J. C. MURPHY,
Counsel for Petitioner.

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